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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DEC - 5 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Communications Assistance for)
Law Enforcement Act)

CC Docket No. 97-213

**RESPONSE OF AT&T CORP. TO SUPPLEMENTAL COMMENTS AND MOTION
FOR ACCEPTANCE OF SUPPLEMENTAL COMMENTS**

AT&T Corp. and AT&T Wireless Group (collectively "AT&T") hereby respectfully submit these Comments in response to the recent Motion for Acceptance of Supplemental Comments¹ filed by the U.S. Department of Justice and the Federal Bureau of Investigation ("DOJ/FBI"), modifying their earlier Petition for Reconsideration of the Commission's March 15, 1999 Report and Order² implementing the systems security and integrity provisions contained in Section 105 of the Communications Assistance for Law Enforcement Act of 1994 ("CALEA").³ This document also responds to issues raised by the DOJ/FBI in their joint

¹ Motion for Acceptance of Supplemental Comments and Reply to Opposition to Supplemental Comments Regarding Petition for Reconsideration of Section 105 Report and Order by the U.S. Department of Justice and Federal Bureau of Investigation, CC Docket No. 97-213 (filed Nov. 29, 2000) ("Motion").

² In the Matter of Communications Assistance for Law Enforcement Act, *Report and Order*, CC Docket No. 97-213, FCC 99-11 (rel. Mar. 15, 1999), *Order on Reconsideration*, CC Docket No. 97-213, FCC 99-184 (rel. Aug. 2, 1999) ("SSI Order").

³ Communications Assistance for Law Enforcement Act, Pub. L. No. 103-414, 108 Stat. 4279 (1994) (codified as amended in 18 U.S.C. § 2522, and 47 U.S.C. §§ 229, 1001-1010).

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Supplemental Comments.⁴ In their joint Supplemental Comments, the DOJ/FBI request that the Commission amend Sections 64.2103(b) and 64.2105(a) of the Commission's Rules so that carriers are required to: (1) make available to law enforcement agencies the contact information for the employees who are designated as telecommunications carrier points of contact, including an employee's name, title or position, phone number, fax number, e-mail address, hours of availability and job description (although such information will be withheld from public inspection); (2) ensure that the appropriate contact information is kept current and effective; (3) immediately notify the Commission, in writing, or by electronic filing, of any change to such information that would render law enforcement unable to use it to contact the officer(s) designated by the carrier; and (4) submit point of contact information to the Commission using a uniform format.⁵

AT&T opposes the DOJ/FBI's attempt to further modify the Commission's Rules implementing Section 105 of CALEA. Without question, the DOJ/FBI's submissions are procedurally invalid. Moreover, while the DOJ/FBI characterize the proposed changes as requirements that "might reasonably be thought implicit in the Commission's existing rules,"⁶ in fact, the proposed amendments are significant and would impose additional unnecessary and unfounded burdens upon telecommunications carriers.⁷

⁴ See Supplemental Comments Regarding Petition for Reconsideration of Section 105 Report and Order by the U.S. Department of Justice and Federal Bureau of Investigation, CC Docket No. 97-213 (filed Nov. 14, 2000) ("Supplemental Comments").

⁵ Supplemental Comments at 1-2.

⁶ *Id.* at 2.

⁷ Similar objections were raised in the Opposition filed with the Commission on November 22, 2000 by the Cellular Telecommunications Industry Association, in which AT&T
(Continued ...)

I. THE DOJ/FBI'S SUBMISSIONS ARE PROCEDURALLY DEFECTIVE AND SHOULD BE STRUCK

Under the Commission's rules, a Petition for Reconsideration must be filed within 30 days of publication of the Commission's rulemaking decision in the Federal Register.⁸ The DOJ/FBI timely filed their Petition for Reconsideration on October 25, 1999. It was published in the Federal Register on January 21, 2000.⁹ Now, over a year after the deadline for seeking reconsideration of the Commission's decision, the DOJ/FBI are attempting to enlarge the scope of their original petition.¹⁰ Under the Commission's Rules, the deadline for making such filings has expired. The DOJ/FBI's Supplemental Comments (and Motion for acceptance of those comments) should not be considered by the Commission.

II. THE DOJ/FBI'S PROPOSED AMENDMENTS ARE SIGNIFICANT AND WOULD IMPOSE ADDITIONAL UNNECESSARY AND UNFOUNDED BURDENS ON TELECOMMUNICATIONS CARRIERS

The DOJ/FBI attempt to downplay the significance of the amendments they propose by claiming that "the requested clarifications would ensure consistency in carriers' compliance with

concur. *See* Opposition to Supplemental Comments of the Cellular Telecommunications Industry Association, CC Docket No. 97-213 (filed Nov. 22, 2000) ("CTIA Opposition").

⁸ 47 C.F.R. §§ 1.4(b)(1), 1.429(d).

⁹ *See* 65 Fed. Reg. 3451-01.

¹⁰ Although the Commission's Rules contemplate the potential filing of supplements to petitions for reconsideration, if permission to do so is granted by the Commission (47 C.F.R. § 1.429(d)), the DOJ/FBI's belated request (filed on November 29, 2000) for leave to file the supplemental comments fails to demonstrate why the expanded relief sought by the DOJ/FBI could not have been included in the original petition nor why it should now be considered by the Commission.

the requirements of the *SSI Order*.”¹¹ But in reality, the proposed amendments are significant and would place additional and needless burdens on telecommunications carriers that are not required by CALEA. The Commission’s rules currently state that if a carrier amends its existing policies and procedures, it must file the amended documents within 90 days.¹² The DOJ/FBI are requesting that the Commission amend its regulations to require that carriers update their systems security and integrity policies and procedures *immediately* should there be a significant change concerning point of contact information.¹³ The DOJ/FBI note that “the proposed modification would make explicit the requirement for carriers to supply current, up-to-date, usable information.”¹⁴

The DOJ/FBI’s proposal is both unnecessary and unreasonable. Carriers are already required to submit such information to law enforcement in a timely fashion. Just last year, the Commission declared 90 days to be “a reasonable amount of time to incorporate modifications to already existing policies and procedures and file them with the Commission.”¹⁵ Moreover, the proposed amendment replaces a clear deadline (“90 days”) with a confusing and subjective one (“immediately”). The proposed amendment provides carriers with little flexibility, goes beyond the scope of Section 105 of CALEA and could unnecessarily raise their risk of liability should carriers not update their policies and procedures as quickly as the DOJ/FBI desire. Carriers are cognizant of their obligation to update their systems security and integrity policies should there

¹¹ Supplemental Comments at 2.

¹² 47 C.F.R. § 64.2105(a).

¹³ Supplemental Comments at 4.

¹⁴ Motion at 4.

¹⁵ *SSI Order*, ¶ 56.

be an amendment of their existing policies and procedures. Carriers are also well-aware of the potential penalties they may incur for failing to do so.¹⁶ The DOJ/FBI's proposed amendment is simply overkill.

The DOJ/FBI also propose that the Commission amend its rules so that carriers report point of contact information using a single form or format.¹⁷ The DOJ/FBI contend that amending the Commission's Rules to require use of a standard form or format will "ensure that the point of contact designee can be contacted quickly" and "simplify each carrier's reporting task, ensure more consistent reporting of point of contact information, and also facilitate the quick retrieval of the information by the Commission."¹⁸ The Commission's current rules regarding point of contact information are more than sufficient. There is no suggestion in Section 105 that the filing of such information must be in a uniform manner or that the Commission is empowered to make it so. The adoption of the DOJ/FBI's proposed Appendix A template,¹⁹ or any similar form, would be arbitrary and unnecessary and should not be made a part of future carrier policies and procedures filings.²⁰

¹⁶ See 47 U.S.C. §§ 229(d), 503(b); *see also* 47 C.F.R. § 1.80.

¹⁷ Supplemental Comments at 4.

¹⁸ *Id.* at 5.

¹⁹ *Id.*, Appendix A, CALEA Section 105 Compliance Manual Point of Contact Information.

²⁰ Moreover, as noted by the CTIA, should the Commission ultimately decide to adopt the proposed Appendix A template or a similar form requesting point of contact information, the Commission must be mindful of its statutory obligation to first obtain the approval from the Office of Management and Budget, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

The DOJ/FBI's proposal appears to be an improper attempt to obtain information about carrier personnel. The Commission has previously rejected such requests from law enforcement and should do so again.²¹ In the *SSI Order*, the Commission ruled a requirement to provide such information could "compromise a carrier's ability to maintain a secure system by identifying the personnel charged with effectuating surveillance functions."²² AT&T wholeheartedly agrees with the Commission's repeated prior assessments of this issue.

As AT&T has noted before, the standard practice in the field between law enforcement agents and carriers includes an exchange of contact information.²³ In most cases, the contacts on both sides are well-known to each other and a great deal of cooperation occurs regularly. AT&T does not believe that mandating use of a standardized form or format will do anything to improve this already cooperative relationship or accelerate the time it takes to reach a carrier's designated point of contact. In some cases, of course, such contacts may have been infrequent or nonexistent because of the size or location or history of the carrier. In those circumstances, however, it is reasonable for law enforcement itself to bear at least some of the responsibility for establishing or maintaining contact with the carrier. It is surely regulatory overkill to require

²¹ See *SSI Order*, ¶ 25. See also Comments of the Federal Bureau of Investigation Regarding Implementation of the Communications Assistance for Law Enforcement Act, CC Docket No. 97-213, at ¶ 60 (filed Dec. 12, 1997) (requesting that the Commission implement rules requiring that "an official list of telecommunications carrier's designated personnel be created and available at all times to appropriate, designated law enforcement personnel, for any operational needs and any necessary security review or checks that may be required." According to the FBI, "[s]uch list should include the individuals' names ... official titles, and contact numbers (telephone and pager))."

²² *SSI Order*, ¶ 25.

²³ See e.g., Comments of AT&T Corp., CC Docket No. 97-213 (filed Dec. 12, 1997).

standardized and “immediate” law enforcement reporting from carriers who have had little or no contact with law enforcement in the past – and who may have none in the future.

III. CONCLUSION

AT&T respectfully urges the Commission to reject the Supplemental Comments and Motion submitted by the DOJ/FBI and, at the very least, resist further modifying the Commission’s Rules implementing Section 105 of CALEA. The amendments proposed by the DOJ/FBI are significant and would impose more unnecessary and unfounded burdens upon telecommunications carriers.

The Commission’s Rules are designed to provide at least some degree of finality. The FBI/DOJ have not demonstrated any new facts or law to justify a reversal of the Commission’s previously well-supported decision. Principles of stare decisis and fundamental fairness require

that the Commission reject the DOJ/FBI's ongoing effort to relitigate issues the Commission has previously and properly decided.

Respectfully submitted,

AT&T Corp.

By:



Stewart A. Baker
Thomas M. Barba
Todd B. Lantor
Steptoe & Johnson, LLP
1330 Connecticut Ave., N.W.
Washington, DC 20036
(202) 429-3000



Mark C. Rosenblum
Stephen C. Garavito
Martha Lewis Marcus
AT&T Corp.
Room 1131M1
295 North Maple Avenue
Basking Ridge, New Jersey 07920
(908) 221-8100

Roseanna DeMaria
AT&T Wireless Group
Room N812A
32 Avenue of the Americas
New York, New York 10013
(212) 830-6364

Dated: December 5, 2000

CERTIFICATE OF SERVICE

I, Todd B. Lantor, an attorney in the law firm of Steptoe & Johnson, LLP, hereby certify that I have on this December 5, 2000 caused to be served by first class mail, postage prepaid, or by hand delivery, a copy of the foregoing Comments to the following:

Larry R. Parkinson
General Counsel
John D. Pifer
Assistant General Counsel
Federal Bureau of Investigation
935 Pennsylvania Ave.
Washington, DC 20535

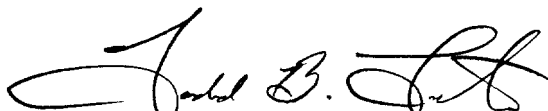
Michael F. Altschul
Vice President and General Counsel
Randall S. Coleman
Vice President
Cellular Telecommunications Industry
Association
1250 Connecticut Ave., N.W.
Suite 800
Washington, DC 20036

Douglas N. Letter
Appellate Litigation Counsel
Civil Division
U.S Department of Justice
601 D Street, N.W.
Room 9106
Washington, DC 20530

Julius Knapp
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Rod Small
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Geraldine Matise
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554



Todd B. Lantor